

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

MYLAN INSTITUTIONAL LLC,
APICORE US LLC,

Plaintiffs,

V.

CIVIL ACTION NO. 2:21-CV-00419-JRG-RSP

HONG KONG KING-FRIEND
INDUSTRIAL CO., LTD.,

Defendant.

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CONSENT JUDGMENT AND PERMANENT INJUNCTION

WHEREAS this is an action for patent infringement brought by Plaintiffs Mylan Institutional LLC (“Mylan Institutional”) and Apicore US LLC (“Apicore”) (collectively “Plaintiffs”) against Defendant Hong Kong King-Friend Industrial Co., Ltd. (“HKKF” or “Defendant”) for infringement of United States Patent Nos. 9,353,050 (the “’050 Patent”); 10,626,086 (the “’086 Patent”); and 10,752,580 (the “’580 Patent”) (“Patents-in-Suit”);

WHEREAS, HKKF submitted Abbreviated New Drug Application No. 213130 (“HKKF ISB ANDA”) to the FDA under 21 U.S.C. § 355(j) seeking to obtain approval to commercially manufacture and sell an isosulfan blue 1% injection product (“HKKF ISB Product”);

WHEREAS, HKKF represented to this Court that it sold 12,318 vials of the HKKF ISB Product to one wholesale customer (“Wholesaler”);

WHEREAS, Plaintiffs allege that HKKF infringed one or more of the claims of the Patents-in-Suit under 35 U.S.C. § 271 by virtue of HKKF's sales of the HKKF ISB Product.

WHEREAS, HKKF stipulates and agrees that Plaintiffs did not authorize or license the manufacture, use, sale, offer for sale, importation or distribution of the HKKF ISB Product;

WHEREAS, HKKF stipulates and agrees that, absent a license or other authorization from Plaintiffs, that its HKKF ISB Product made pursuant to the HKKF ISB ANDA infringes one or more claims of the Patents-in-Suit and that the Patents-in-Suit are valid and enforceable;

WHEREAS, HKKF represents and warrants that the 12,318 vials of HKKF ISB Product identified in this Consent Judgment and Permanent Injunction are the only batches, lots, or vials of the HKKF ISB Product that HKKF has made, used, sold, or imported into the United States;

WHEREAS, Plaintiffs and HKKF have entered into a Settlement Agreement to settle this action (the “Settlement Agreement”) under which HKKF has agreed to refrain from the manufacture, use, sale, and offer for sale of the HKKF ISB Product in the United States or the importation of the HKKF ISB Product into the United States until the expiration of the Patents-in-Suit or as otherwise permitted by the Settlement Agreement or by 35 U.S.C. § 271(e)(1); and

WHEREAS, Plaintiffs request that this Court enter a permanent injunction enjoining HKKF from infringing the Patents-in-Suit;

IT IS HEREBY ORDERED, DECREED, and ADJUDGED as follows:

1. The Court has jurisdiction over the Plaintiffs and HKKF and the subject matter of this action.
2. HKKF stipulates and agrees that the HKKF ISB Product infringes the Patents-in-Suit.
3. HKKF stipulates and agrees that the claims of the Patents-in-Suit are valid and enforceable.
4. It is **ORDERED** that HKKF and its officers, directors, employees, agents, successors, affiliates and assigns, and all persons or entities acting in concert or participation with them are permanently enjoined from infringing the Patents-in-Suit by the commercial manufacture,

use, offer to sell, sale, importation, or distribution of the HKKF ISB Product in the United States until the expiration of the Patents-in-Suit unless and until otherwise authorized in the Settlement Agreement or by 35 U.S.C. § 271(e)(1).

5. It is **ORDERED** that HKKF shall request the return or destruction of the HKKF ISB Product that was in the possession of the Wholesaler as of November 29, 2021 and cooperate in good faith with all reasonable requirements from the Wholesaler for the return or destruction.

6. All claims in this action that relate to the HKKF ISB Product are hereby dismissed without prejudice and without costs, disbursements, or attorneys' fees to any party.

7. This Court shall retain jurisdiction over Plaintiffs and HKKF for the purpose of enforcing the terms of this Consent Judgment and Permanent Injunction and over any matters related to or arising from the interpretation or enforcement of the Settlement Agreement.

Agreed to in form and substance:

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So ORDERED and SIGNED this 13th day of December, 2021.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE